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Current Topics.

War Prisoners.

THE January issue of *The Law Society's Gazette* contains some interesting news of lawyer prisoners of war and their activities in Camp P.G. 21. The bearer was Captain J. E. K. WALTERS, who was admitted in 1936, and is associated with the firm of Stone, Davis, Savige & Partridge, of Leicester. He succeeded in making his escape from that camp at the time of the armistice with Italy, when Lieut. R. C. RICKETT, who was admitted in 1930, and practised at Freshwater, Isle of Wight, and Lieut. P. D. G. LANGRISHE, R.A., who is articled to Mr. G. A. COLLINS, of 6, Bedford Row, W.C.1, escaped. Lieut. LANGRISHE, it is stated, had to walk some 400 miles to reach the British lines, and Captain WALTERS actually escaped from a railway train which was transporting him from Italy to Germany and wandered about Italy for about a month before reaching the British forces. Captain WALTERS called at The Law Society's offices and gave particulars of the Camp Law Society of which he was secretary during his captivity. Barristers and solicitors, he stated, delivered lectures to articled clerks and other law students on various legal subjects, including commercial law, equity, the law of contract, conveyancing, and probate, divorce and criminal law from November, 1942, onwards. Certificates were given to students who attended regularly, and the *Gazette* hints that the Council may consider these certificates as relevant on any application in the future for exemption from compulsory attendance at a provided or approved law school. There were only about thirty books in the camp, but those few were up to date. Actually 150 books were sent to this camp, but it is conjectured that the non-arrival of the remainder of the books was due both to transport problems and to the delay by the Italian censorship. In consequence of a statement by Captain WALTERS, the Council of The Law Society are seeking to arrange that papers set at previous Intermediate and Final Examinations will be sent to every camp in Germany. An additional piece of information, given by the Council, is that in November, 1942, a number of candidates sat for that Final Examination of Oflag VII B. As they had not received their results by March, 1943, owing to postal delays, they sat again for the March examination, but when they were half way through their papers they received news that all their candidates at the November examination had passed.

The Cost of Justice.

THE point which was made by Mr. CLEMENT DAVIES, K.C., in the recent Commons debate on the Supreme Court of Judicature (Amendment) Bill as to the low cost of justice to the State (*ante*, p. 46) has again been verified by the publication for the financial year 1942–43 (ending 31st March, 1943) of the Account of Receipts and Expenditure of the High Court and Court of Appeal. The total receipts, mainly from court fees, were £895,896 and the expenditure, of which the larger proportion consisted of salaries, was £947,661. Court fees taken in stamps totalled £448,583 and those taken in cash were £274,848. The Official Solicitor's costs were £38,763. Judges' salaries in the Court of Appeal totalled £36,000, in the Chancery Division £25,000, the King's Bench Division £62,000, and the Probate, Divorce and Admiralty Division £24,198, and judges' pensions were £29,372, making a total of £176,570, exclusive of the salary of the Lord Chancellor, of pensions of previous Lord Chancellors, and of estimated proportion of the judges' salaries and pensions attributable to the criminal business of the High Court, i.e., £37,193. Salaries, wages and allowances in the Royal Courts of Justice and Probate Registry amounted to £366,637, in the Lord Chancellor's Department and Crown Office to £14,419, and £17,382 in the Bankruptcy Department. It is also of interest that stationery and printing expenses were £23,412. The most interesting figure is the £10,000 grant in aid of the expenses of administering the Poor Persons' Rules. It is a small sum, and if the courts of justice are to be truly open to rich and poor alike it will have to be much increased. On an examination of the figures for 1943 and taking into account that the Revenue receives back a considerable proportion of what it pays away in salaries and wages, the High Court and Court of Appeal are in reality run at a profit. There can, therefore, be no valid objection on the ground of expense to spending more on the courts so as to make speedy and efficient justice available to all who seek it.

Judges' Summonses.

THE result of the recent approach by the Council of The Law Society to the President of the Probate, Divorce and Admiralty Division on the subject of delay in the hearing of judges' summonses in that division is announced in *The Law Society's Gazette* for January, 1944. The President appointed a small committee under the chairmanship of Mr. H. NEVILLE SMART, C.M.G., O.B.E., J.P., to consider and report on the question, and as a result of that report the President has directed that as and from 11th January, 1944, a new procedure be adopted. This is: (i) The list of judges' summonses will be divided into two parts, namely (*a*) the uncontested list, consisting of agreed or *ex parte* applications, and (*b*) the contested list, comprising all other summonses; (ii) The draft list posted on the notice board on the Friday previous to the date for which the summons is issued will state that the contested list will not be taken before a stated hour, which may vary each week according to the condition of the list; (iii) As each summons for the uncontested list is issued at the Registry, it will be given a number, and the summonses in that list will be called on for hearing as follows: (*a*) adjourned uncontested summonses, and (*b*) other uncontested summonses in numerical order, and if the parties are not ready, placed at the bottom of the uncontested list; (iv) Each Monday morning the existing practice of ascertaining which summonses are in fact contested and which uncontested, and which are likely to take time and which are not, will be continued, and the contested list will then be heard in the following order: (1) Those summonses in the contested list which have by the time of the hearing become uncontested; (2) adjourned contested summonses; (3) other contested summonses, those which are clearly going to take a long time being taken last.

Reform of Patent Law.

MR. E. A. BINGEN, solicitor to Imperial Chemical Industries, is the author of a pamphlet under the title "Patents and Licences of Right," which was recently published by Imperial Chemical Industries. In a preface, contributed by LORD MCGOWAN, it is stated that there has been a modern challenge to the monopolistic basis of patent law, by those who think that the rights conferred by a patent should be drastically curtailed in the interests of the community at large. LORD MCGOWAN, while observing that the pamphlet is not intended to be a technical treatise, puts in a plea for a simplication of the patent law and a reduction in its cost, so as to help the inventor of slender means, who is at a disadvantage in comparison with the large corporation. The pamphlet fully sets out the terms of ss. 24, 27 and 38A of the Patents Act and points out that s. 27 is aimed, not against the monopoly conferred by a patent, but against an abuse of monopoly rights. The position now is, writes the author, that a patent monopoly remains a monopoly only so long as it is not abused by the patentee be he inventor or manufacturer. Criticism of the section, he states, can only be directed at the way the courts have

interpreted it, and he quotes the case of *Brownie Wireless Co., Ltd.*, in which LUXMOORE, J., said that an applicant for a compulsory licence who contributed nothing to the art himself would not be granted a compulsory licence if the demand was being adequately met by other manufacturers. If the economic proposition that it is in the public interest to limit supply is false, the pamphlet states, it is for the courts to change their attitude rather than for Parliament to amend the statute. In view of the binding character of precedent, it is difficult to see how this can be done without the expensive and elaborate process of a House of Lords appeal, and legislation would, in spite of the view put forward by Mr. BINGEN, be quicker and surer than litigation. The writer weighs up the arguments for and against a change in the present system from the point of view of the inventor, the manufacturer and the public, and gives a number of reasons why a system of universal licences of right would not be in the public interest. " Only if we are to go into a socialised control of all industrial activity and commerce would it be justified or necessary. Conceivably, in such a State research could be done by publicly financed laboratories, and losses due to unsuccessful commercial ventures absorbed by the public treasury." The writer notes that the National Patent Planning Commission set up by PRESIDENT ROOSEVELT, which recently issued its report, is not generally in favour of a compulsory licensing system, and merely suggests that no injunction should be granted against an individual infringing a third party's patent where the use of the invention in question is necessary for the national defence or required by the public health or public safety.

The American Report.

THE National Planning Commission was established by executive order of the U.S. President dated 12th December, 1941, " to conduct a comprehensive survey and study of the American patent system, and to consider whether the system now provides the maximum service in stimulating the inventive genius of our people in evolving inventions and in furthering their prompt utilisation for the public good . . ." After a careful study the Commission reached the conclusion that the American system was the best in the world, but that it should be adjusted to meet existing conditions. To achieve this the Commission recommended that all patent agreements be recorded with the U.S. Patents Office, in order to expose secret, improper or illegal agreements. In a suit for infringement a patent owner should be limited to reasonable compensation without prohibiting the use of the patented invention, whenever the court finds that manufacture of the invention is necessary to the national defence or required by the public health or public safety. A public register should be kept of patents of which the owners are willing to grant licences on reasonable terms. Congress should declare a national standard whereby patentability is determined by the objective test as to its advancement of the arts and sciences. The patent term should not endure more than twenty years after the application is filed. The present term of seventeen years would be retained except in those cases where more than three years were consumed in obtaining a patent. Delays of more than three years in the prosecution of an application for patent would result in a corresponding shortening of the seventeen year term. When a patent is refused by the Patent Office the inventor now has relief in the form of review by either of two courts. This is both confusing and unnecessary. It is proposed that the Court of Customs and Patent Appeals be designated as the sole reviewing body upon the denial of a patent by the Patent Office. Further reports are to be issued to deal with (*a*) the policies involved in connection with inventions made by Government employees and by agents and contractors of the Government and with the control and use of patents owned by the Federal Government ; and (*b*) what methods and plans might be developed to promote inventions and discoveries which will increase commerce, provide employment, and fully utilise expanded defence industrial facilities during normal times.

Advice on War Damage Repairs.

WE are informed by the Ministry of Health that local authorities in areas where there has been bomb-damage are being supplied with small stocks of a simple guide to the main provisions covering the repair of damaged houses, for issue in response to inquiries from owners and occupiers. In the form of a leaflet entitled " Repair of War Damage to Houses," it has been prepared in consultation with the War Damage Commission and the Ministry of Works. The leaflet is intended merely to help owners and occupiers by giving general advice on the main points arising from war damage. It is pointed out that in individual cases the War Damage Commission, the Regional Licensing Officer or the local council must be consulted. As since the printing of the leaflet the limit which can be spent on certified repairs has been raised from £250 to £500 in the case of houses and from £200 to £400 in respect of flats, special gummed labels giving the amended limits are being sent to local authorities for affixing to the leaflets. Owners and occupiers of dwelling-houses are thus provided with information in the simplest possible form on the time and manner of notification of war damage to the regional office of the War Damage Commission, the difference between total losses and non-total losses, how claims are made, how payment is made, and when and on what terms repair works are done by the local authority. The leaflet does not purport to give an authoritative interpretation of the law, but it is intended to help owners and occupiers by giving general advice on the main points arising after war damage. It is stated that in individual cases, the War Damage Commission, the Regional Licensing Officer or the local council must be consulted, and a list of the addresses of the regional offices of the War Damage Commission and the Regional Licensing Officers of the Ministry of Works is given. While it is not necessary and certainly not possible for every citizen to be a lawyer, it is necessary that he should be acquainted with his elementary civil rights and duties, and this excellent leaflet, it is to be hoped, will be typical of much that will be done in this direction in the future.

Registration of Builders.

SOLICITORS, who are " officers of the court " and whose names are entered on rolls, will not complain that other servants of the public are seeking statutory recognition for their services by the creation of a register. Such a register protects both the public and the profession or trade from which it is formed. No services will be more essential in the months and years immediately following the end of the war than those of builders, and therefore the approval given recently by the National Federation of Building Trade Employers to a report from a committee which has been investigating the question of the registration of builders on a qualitative basis is all the more welcome at the present time. The report proposes that a statutory scheme should be promoted for the permissive registration of builders, similar to that in the Architects' Registration Act, 1931. Application would have to be made to Parliament for the establishment of a Registration Council. The function of the Council would be to keep a register of undertakings trading as builders. Any undertaking engaged in the building industry would be eligible for registration. Registration would be voluntary, and only builders who had registered would be entitled to use the title " Registered Builder." Admission to the register would be open to all builders in accordance with the conditions prescribed by the Council. The Registration Council would appoint annually an admission committee, a discipline committee, and a board of building education. For the first few years applicants would be assessed on existing qualifications. Later, when there will probably be greater facilities for building education, it would probably be appropriate, in the interests of the industry, to demand more stringent qualifications. Experience has shown that the adoption of statutory standards of education go far towards raising the standards of public services in different trades and professions, and the adoption of a register is a first and necessary step towards that desirable end.

Recent Decisions.

In *In re Furness, Withy & Co., Ltd.*, on 7th February (*The Times*, 8th February), UTHWATT, J., confirmed an alteration of the petitioning company's objects to enable it to carry on the business of carriers of passengers, goods and mails by air, and to establish lines of aerial conveyances on the ground that the proposed new business could conveniently run with that of a shipping company. The petitioning company, it was stated, had a paid-up capital of £7,500,000.

In *Gonzalez* v. *Compton*, on 9th February (*The Times*, 10th February), the Court of Appeal (THE MASTER OF THE ROLLS, MACKINNON and LUXMOORE, L.JJ.) held in a case where a constable was sued for assault in assisting to execute an eviction order which was later held to be illegal, that the use of force was not justified, and the appeal must be allowed with costs and agreed damages of £5 5s. awarded. County court costs on the scale appropriate to the amount recovered were awarded.

In *Howard* v. *Treasury Solicitor and Another*, on 9th February (*The Times*, 10th February), HENN COLLINS, J., held in a case in which father, wife and son were killed by the explosion of a bomb which demolished the house in which all three were sleeping, the parents in one room on one floor, and the son on another floor, that the three did not die simultaneously, and therefore the presumption of s. 184 of the Law of Property Act, 1925, that the youngest survived must be applied. His lordship further held that the parents deaths were simultaneous in law and that there was no survivorship in fact and no presumption that one or other of the parents died first. His lordship also held that there was an intestacy, although the testator had on 6th May, 1940, made two wills, each revoking all previous wills, but in one leaving his estate to his wife and the other to his son, explaining in a letter to his wife written on the same day, that he took that course with the intention of guarding against the contingency of both his wife and himself being killed together, or of one surviving the other for only a short time. There was nothing to show which of the two wills were executed first, and his lordship held that they were irreconcilable one with another, and could not be admitted to probate. They were, however, effective to revoke all earlier wills.

Legal Aid for the Poor.

(CONTRIBUTED.)

IT has become obvious to most lawyers who are concerned with the giving of legal aid to the poor that the present system suffers from many drawbacks, both from the point of view of the poor person receiving or, in many cases, unable to receive, legal help, and from the point of view of the lawyer who is giving his assistance to such persons. The Haldane Society Sub-Committee on Legal Reconstruction issued in June, 1942, a memorandum which outlined certain desirable changes of the present system. These proposals were fully examined in two learned articles in *The Law Quarterly Review* of July and October, 1943, respectively by an eminent lawyer, Dr. E. J. Cohn, who is now serving in a legal capacity with H.M. Forces. The learned author of these articles, which were issued as a special reprint by Stevens & Sons, was invited to address the Haldane Society on 25th January at the Law Society.

At the meeting Dr. Cohn stated that the Haldane Society proposals are but a logical conclusion which followed from the general attitude taken by the modern State to its poorer citizens. Legal aid must for the sake of convenience be divided into two groups, viz., legal aid in litigation and legal aid outside litigation. Legal aid in litigation is a prerequisite of a democratic legal system. Every person must be in a position to avail himself of the law. If he is prevented from doing so by financial reasons, such a person is deprived of legal protection as effectively as if he was expressly excluded from the courts. No government that is based on democratic principles can afford to exclude a great proportion of its citizens from access to the courts because of their lack of means. Indeed, in ancient times, access to the courts and to legal advice was in some countries free of charge. The Roman, Greek and Jewish legal systems are well-known examples of this method of administering the law. It would, however, be impossible to introduce such a system in this country. If the State accepts responsibility for the education, health and other necessities of the poorer members of the community, there is no reason why it should not equally shoulder the expense of enabling the poor citizen to avail himself of the law of the land. Legal aid is clearly a corner stone of a properly administered modern State.

If legal aid is to be given to all who are in need of it a person or committee must decide whether such a need does in fact exist. Dr. Cohn is of the opinion that it would be unwise for members of the profession to be the judges deciding on whether to grant an application for legal aid. For the impression may well arise in the minds of the general public that the profession has some vested interest in the granting or the withholding of legal aid. In most continental countries a judge decides whether legal aid is to be granted. The Haldane Society suggests High Court masters and county court registrars for this important function. It would be useless to open the courts to poor litigants if sufficient lawyers are not available to deal with the cases passed by the master or registrar.

Whatever the causes of poverty, lawyers as a group are not responsible for its existence. It is impossible to expect the legal profession to provide the poor with this branch of social service when other classes of the population make no contribution in their own respective spheres of life. Free meals in schools are not provided out of the pockets of the teachers, nor are other social services given at the expense of the group of persons most closely connected with them. It is to the lasting credit of both branches of the legal profession that it has given its services for years to tens of thousands of needy citizens. But the time for charity by individual lawyers has obviously passed, because it puts an ever-increasing strain on the more public-spirited members of the profession, while making it impossible to grant aid to all deserving cases.

It may be said that most litigation in county courts in which poor persons are concerned is about trifling matters. It is true that the value of the subject matter may be small, but the guarantee of justice to every citizen is not a trifle in a democratic society. Apart from the fact that no poor persons procedure is available at present in county courts, it is an anomaly that poor persons should generally be unable to get legal aid in the Court of Appeal.

It is sometimes said that county court judges or registrars are able to protect the interests of litigants appearing in person. Many lawyers have seen that the courts do not work in that way. In theory this system is even more objectionable, for the judge either becomes a partisan of the poor person or an advocate who is unable to represent his client's interest to the best advantage, as he is not fully instructed and has to restrain his skill in fairness to the other litigant.

The late Mr. Neville Chamberlain, who is unlikely to be accused of revolutionary tendencies, proposed several years ago that the guardianship of all illegitimate infants should be a State responsibility.

If the necessity for legal aid for the poor is accepted, the question of the definition of " the poor " must be fully considered. The present test of £2 or £4 in London, irrespective of the applicant's commitments or family, is from every point of view unsatisfactory. The better test is: " Can the applicant afford to pay an ordinary solicitor " ? This test is elastic and depends not only on the general financial position of the applicant, but also on the costs of the proposed litigation. Thus a person with a limited income may be in a position to defend a possession case, but in many cases will be unable to fight a wealthy company on a point of law. The master or registrar should weigh the applicant's means in relation to the proposed litigation.

The next important point to consider is whether the case of the proposed litigation is " worthy " of support. Again, the lack of lawyers able to assist, prevents many a good case from being taken up by the Local Poor Persons Committees. The fact that 95 per cent. of poor persons cases are at present successful shows that a poor person must have an overwhelming case before he can get assistance. Dr. Cohn supports the Haldane Society in its demand that a poor person should be entitled to legal aid if he makes out a *prima facie* case. Legal rights are not charity, yet legal aid to-day depends on the charitable feelings of the legal profession.

In the U.S.A. it has been found that there is one case per 100 inhabitants per year needing legal assistance. Salford, which has one of the most active and long-established legal advice centres in this country, deals with one case per 250 inhabitants per year. They could not manage any more cases and retain the present standard of efficiency. All charity advice centres suffer from strong drawbacks such as the fact that the rota system brings about an intermeddling by several advisers with the same case, with the resulting repetition and waste of time, quite apart from the fact that the intimacy of solicitor and client is destroyed. The fact that young and inexperienced lawyers make up a great proportion of the personnel of the voluntary centres also tends to lower the standard of the advice that is dispensed. It is also inevitable that where advice centres only function once a week many clients may find advice delayed if they are unable to turn up at the time at which the part-time volunteer is available.

The Haldane Society proposal briefly aims at the following :—

(1) To provide advice centres for boroughs, etc., or to provide advice for people within certain income limits.

(2) Every centre to be staffed by at least one full-time qualified solicitor and one social worker.

(3) The centre advises, writes letters and negotiates settlements on behalf of their clients.

(4) Where litigation is necessary, the centre issues a legal aid certificate.

(5) Persons earning less than £250 per annum are to get advice free ; others pay in accordance with their means.

(6) There shall be strict enquiries into means.

(7) The Lord Chancellor is to set up legal aid departments for poor persons in the High Court, District Registries, county courts and police courts, to be in charge of a master or registrar or probation officer respectively.

(8) The legal aid department, after considering whether the applicant has a *prima facie* case or a legal aid certificate, will, after ascertaining that the applicant has not sufficient means to employ a solicitor in the normal way, assist him in bringing or defending an action.

(9) Each legal aid department will keep a roll of solicitors willing to act on special terms.

(10) A solicitor acting for a legal aid department will receive two-thirds of his solicitor and client costs from the legal aid department if he is unable to recover his costs from any party to the proceedings.

(11) Counsel willing to act for the department will receive fees on a similar reduced scale from the department.

(12) Assisted persons will have to contribute to the expenses of their litigation as required by the department.

Dr. Cohn pointed out the necessity of avoiding the creation of a new civil service. He also pointed out the desirability of avoiding a monopoly by the legal aid departments. A client who has lost much of his money must be able to get a legal aid certificate from his own solicitor if he is unable to continue paying the ordinary fees. In order to avoid State control two methods of controlling the envisaged system are possible : (1) supervision by The Law Society and a blanket grant by the Treasury as at present given to the Citizen Advice Bureaux, or (2) municipal bureaux as run in Sweden and parts of the U.S.A. The disadvantage of the first system is the suspicion with which the public might view the fact that bureaux are run by the profession which might on the face of it want to exclude as many people as possible from its benefits. The advantage of the second system, as has been shown in the U.S.A., where all types of advice bureaux have been tried, is the high degree of confidence which a bureau " in the Town Hall " would inspire amongst the local inhabitants. There has been no friction either in Sweden or the U.S.A. between the profession and the bureaux.

There was a good deal of discussion on the details of the proposed scheme to which members of both branches of the profession contributed. It was clear that a decisive change in the present system was both inevitable and urgent. Thousands of cases that are being dealt with by the Services Poor Persons Department will have to be handled by the new organisation which must be set up immediately after the war, if not before. The Haldane Society scheme will create an important branch of

our ever-expanding social services and will, if put into effect, be of value both to the applicants receiving aid and to the profession which will be able to give its assistance, though at reduced rates, to many more persons than are at present in a position to afford their services.

A Conveyancer's Diary.

Commorientes.

SINCE *Re Grosvenor*, to which attention was called in the "Diary" of 25th December, 1943, a further case on "simultaneous" deaths has been decided, this time in the Probate Division. The case was *Howard* v. *Treasury Solicitor and Another*, before Henn Collins, J. A report is to be found in *The Times* newspaper of 10th February, 1944. The facts appear to have been that a husband and wife and their son were all killed in their home by a bomb. The learned judge stated that the husband and wife were asleep in one room and the son in another. The proceedings were as to probate of certain alleged wills of the husband; it was held that he died intestate. The learned judge, in so holding, came to the conclusion that the husband and wife had died simultaneously, so that L.P.A., s. 184, did not apply as between them, but that as between each parent and the son there was uncertainty as to the order of the deaths, so that the section did apply. Presumably this finding would determine only the question as to whether the father died testate or intestate, since that was all that was before the Probate Division, and those proceedings would not, for example, determine who took the father's estate on his intestacy.

The position is thus getting more and more complicated, and it seems desirable to repeat here the warning which I gave in connection with *Re Grosvenor*, viz., that personal representatives should be advised to exercise the utmost caution in these cases. It will, no doubt, often be desirable to seek the directions of the court as to distribution. It is noteworthy, moreover, that both *Re Grosvenor* and *Howard* v. *Treasury Solicitor* were about deaths as long ago as September, 1940, which suggests that we are only at the beginning of those cases. It may also be necessary, if *Re Grosvenor* is definitely upheld, to reopen some estates which have been wound up.

Settled Land or Trust for Sale?

In the first five years after the coming into force of the property legislation of 1925 a great deal of difficulty was caused by the question whether any given piece of land was held on trust for sale or was settled land. This difficulty still occurs from time to time; if the estate in question is large, it may well be a matter of great importance, affecting numerous derivative titles, to make a right decision; for on this point turns the question whether or not a vesting deed is to be the main root of title for many years to come.

The first section of the Settled Land Act, 1925, provides that any one or more instruments under which land stands limited in certain ways set out in the section is to be a "settlement" for the purposes of that Act, while s. 2 lays down that land subject to a settlement as thus defined is to be "settled land." The Law of Property (Amendment) Act, 1926, which for this purpose was retrospective to 1st January, 1926, introduced into s. 1 a new subsection, subs. (7), which states, "This section does not apply to land held upon trust for sale." But this new subsection does not prevent land from being settled land in every case where the limitation of the fee simple is to trustees for sale.

The first point to be borne in mind is that "trust for sale" in the Settled Land Act is defined as meaning the same as it does in the Law of Property Act. By the definition section of that Act, the expression means an "immediate binding trust for sale." We need not pause here over the word "immediate," whose effect has been discussed in a comparatively recent "Diary." Our present concern is with the word "binding," which has no statutory definition and does not appear to have been used of trusts for sale before it was used in the present connection.

The first case in which the difficulty arose was in *Re Leigh's Settled Estates* [1926] Ch. 852, generally known as "*Re Leigh* (*No.* 1)." This case, it is important to note, was decided a fortnight before the Amendment Act became law, and therefore at a date when S.L.A., s. 1 (7) did not exist. The form in which the question of settled land or trust for sale arose was on the issue whether a person in the enjoyment of the income of land was a person having the powers of a tenant for life under S.L.A., s. 20 (1) (viii), which refers to persons entitled to the income of land for life "unless the land is subject to an immediate binding trust for sale." The limitations operative on 1st January, 1926, were as follows: There was a jointure rent-charge for life under an old will, whose other provisions had ceased to be effective, and an instrument under which an owner in fee simple, Mrs. T, had conveyed the whole estate in fee simple, subject to the jointure, to trustees on trust for sale and to hold the proceeds on trust to pay certain annuities and to pay the balance to herself. In 1924 and 1925 two orders had been made, under the Settled Land Act, 1884, s. 7, the joint effect of which was to give Mrs. T the powers of a tenant for life under the old legislation. Now, on these facts, Tomlin, J., held that Mrs. T had the powers of a tenant for life under S.L.A., s. 20 (1) (viii), which involved holding that the land was not held on an immediate binding trust for sale. The main sentences in his judgment are on p. 859: "The expression 'unless the land is subject to an immediate binding trust for sale' must I think mean unless the land that is the total subject-matter of the settlement is subject to a trust for sale which operates in relation to the whole subject-matter of the settlement . . . it may well be that, where the subject-matter of the settlement is the whole unencumbered fee simple, there is no immediate binding trust for sale as long as there is not a trust for sale which is capable of overriding all charges having under the settlement priority to the trust for sale." The trust for sale in that case could not, of course, override the jointure, and was therefore held not to be "binding."

The same case came up again the following year, in *Re Leigh's Settled Estates* (*No.* 2) [1927] 2 Ch. 13, in view of the passing of the Amendment Act. Tomlin, J., now came to a different conclusion. He drew attention to L.P.A., s. 2 (2), which in its amended form allows "approved" trustees for sale, or a trust corporation, to over-reach equities prior to the trust for sale. As he held that the approval need not be *ad hoc*, it followed that the trustees for sale in this case, having been impliedly approved by the court on the occasion of the order made in 1925, were able to over-reach the jointure. Consequently, by the definition which he had given in *Re Leigh* (*No.* 1), the trust for sale was now binding, so that the land was not settled land.

A very different definition was propounded by Romer, J., in *Re Parker's Settled Estates* [1928] Ch. 247. The material facts were the same as in *Re Leigh*, save (i) that there had been no kind of "approval" of the trustees, and (ii) that, in addition to an (equitable) jointure, there was, ahead of the estate of the trustees for sale, a legal term of 1,000 years to secure certain portions. Romer, J., criticised the definition laid down in *Re Leigh* (*No.* 1), pointing out that if it were right no trust for sale would qualify under S.L.A., s. 1 (7), unless the trustees were "approved" trustees or a trust corporation. What would be worse, the definition of "trust for sale" is constant throughout the Settled Land Act, the Law of Property Act, and the Trustee Act, and so all the sections in the other two Acts which deal with trusts for sale would have reference only to this very narrow class, and not, as is usually thought, to all trusts for sale. The alternative definition suggested by the learned judge was that "binding" meant that the trust for sale must be binding upon *the whole legal estate* the subject-matter of the settlement. In the case before him there was an outstanding legal term, so that the whole legal estate in the land was not subject to a binding trust for sale, and therefore the land was settled land. It may be as well to state at this point that in *Re Sharpe's Deed of Release* [1939] Ch. 51, at p. 70, Morton, J., intimated his agreement with *Re Parker*. In *Re Norton* [1929] 1 Ch. 84, there were outstanding ahead of the legal fee simple of the trustees for sale certain equitable rent-charges and portions and a legal term limited to secure the portions. This case also came before Romer, J., who held that the land was settled land, following *Re Parker*.

In *Re Austen* [1929] 2 Ch. 155, Clauson, J., had to decide the position of some land which was subject to a perpetual equitable rent-charge created voluntarily, and to other equitable interests, and finally to a trust for sale. The learned judge seems to have thought that the only point in the case was whether a voluntarily created equitable rent-charge in fee simple is an interest whose presence makes land settled land under S.L.A., s. 1 (1) (v). *Re Leigh*, *Re Parker* and *Re Norton* appear not to have been cited in argument at all, and the learned judge did not address his judgment to the question whether the land was settled land or land held on trust for sale. On the contrary, in the first paragraph (see p. 160), he said that he need not concern himself who were the people to whom the land belonged subject to the perpetual rent-charge and certain life annuities. *Re Austen* is authority, therefore, for the proposition that, *so far as S.L.A., s. 1 (1) is concerned*, the presence of a perpetual equitable rent-charge, created voluntarily, ahead of the legal fee simple, makes the entirety settled land. It is not authority so far as S.L.A., s. 1 (7), is concerned for the further proposition that the same is still true if the legal fee simple is vested in trustees for sale. If the interest ahead of the legal estate of the trustees for sale is an annuity for such a period as that the annuity can only exist in equity, and if there is no prior legal estate, it is reasonably clear that the trust for sale is binding, and that the land is not settled land. Thus *Re Leigh* (*No.* 2) was rightly decided, but for the wrong reason: if *Re Parker* is accepted as correct, it is not necessary to rely on the trustees having been "approved." Again, the effect of *Re Sharpe's Deed of Release* is that if the equitable interest ahead of the legal estate of the trustees for sale takes the form, not of a mere charge, but of an active trust to pay the annuity, the trust for sale is not "binding." Further, in a case like *Re Austen* where the equitable rent-charge is itself in fee simple and existed before 1926, one has to remember L.P.A., Sched. I, Pt. II, para. 4, a transitional provision the effect of which was that at the beginning of 1926 the rent-charge would have become a *legal* one unless it was one over-reachable under a subsisting

trust for sale or settlement. It is evident that Clauson, J., had this provision in mind in *Re Austen* (see pp. 162, 163). In a case where the transitional provisions applied, one then has the following reasoning: either the equitable rent-charge in fee simple is over-reachable or it is not. If it is not, then at the beginning of 1926 it became a *legal* rent-charge, with the result that the legal fee simple in the land can never be sold free of incumbrances. Or the equitable rent-charge is over-reachable, and so continues to be equitable. But it cannot be over-reachable under the trust for sale, because the trust for sale is behind it and there is nothing to give any such extra powers to the trustees for sale as such. Therefore, if it is over-reachable at all, the land must be settled land, and not land held on trust for sale. This last solution is clearly correct, because it is the only one which achieves the main object of the 1925 legislation, viz., to make unencumbered legal estates in fee simple more easily transferable; it applies *Re Parker* in that the rent-charge is an interest which, if not over-reachable as an equitable interest in settled land, is necessarily an interest which would be outstanding as a prior legal estate.

Landlord and Tenant Notebook.

Statutory Tenancy: Possession by Licensee.

THOUGH "unhappy differences" between a husband and wife largely accounted for the litigation in *Brown* v. *Draper*, reported in *The Times* of 29th January, it was the relationship of the parties as licensor and licensee that determined the question in issue, and the case is not likely to attract the attention of Dr. Edith Summerskill.

The defendant's husband took a tenancy of the plaintiff's house in 1941, the letting being within the Rent, etc., Restrictions Acts. He lived in it with his wife till April, 1942, when they separated; he left the house, she stayed on with his permission; and he left with her his furniture. In 1943 the plaintiff gave him notice to quit and sued the defendant for possession. The husband, called as a witness by the plaintiff, deposed that the defendant could continue to have the furniture if she took care of it, and (in relation to the notice to quit) that he had finished with the house and had no further claim to it. The county court judge found for the plaintiff; the Court of Appeal reversed him.

The position may conveniently be discussed by recalling that, in the course of his judgment of *Carter* v. *S.U. Carburetter Co., Ltd.* (1942), 58 T.L.R. 348 (see 86 SOL. J. 208), Lord Greene, M.R., protested against the treatment of wide language used by judges in considering a particular class of protection given by an Act as applying to other and distinct parts of the Act which were not before them. What was decided in that case was that the protection against eviction afforded by s. 5 of the 1920 Act was not the same thing as the protection against increases of rent afforded by s. 1. But, in the same judgment, the learned Master of the Rolls referred to *Skinner* v. *Geary* [1931] 2 K.B. 546, citing the following passage from the judgment of Scrutton, L.J.: "Parliament was dealing with a tenant who was in occupation and who was not to be turned out; it was not dealing, and never intended to deal, with a tenant who was not in occupation but who wished to say: 'Although I am not in *actual* occupation I claim the right so long as I pay the rent to retain my tenancy' . . . A non-occupying tenant was, in my opinion, never within the precincts of the Acts, which were dealing only with an occupying tenant who had a right to stay in and not be turned out."

Now, the ground on which the Court of Appeal reversed the decision of the county court judge in *Brown* v. *Draper* was that the defendant's husband had never given up possession, the reasoning being that he retained it by leaving his wife and his furniture in the house. And Lord Greene, M.R., observed that the consequences, if the contrary were true, would be that many soldiers serving abroad would find on their return that possession of their dwellings had been recovered from their wives.

The facts of *Skinner* v. *Geary*, a claim for possession of a controlled dwelling-house, were that the defendant had occupied it till a date in 1919, when he moved to another house (of which his wife was tenant). It was then occupied by his wife's sister and her husband. In May, 1930, the plaintiff gave the defendant notice to quit; in June the sister-in-law and her husband moved out and a sister moved in. The action succeeded In view of the fact that, as far as the report of *Brown* v. *Draper* at present available goes, the decision does not appear to have been mentioned by either side, and in view of the learned Master of the Rolls' hypothetical illustration of consequences, it is of some importance to examine the reasoning.

Both in the Divisional Court and in the Court of Appeal those who tried *Skinner* v. *Geary* were urged to distinguish the then recent case of *Haskins* v. *Lewis* [1931] 2 K.B. 1 (C.A.) and to approve the decision in *Kreitman* v. *Vidofsky* (1927), 43 T.L.R. 335. And they held that the latter—in which the tenant had left and put his parents and brother into occupation, rent free, but been held to be entitled to the protection—was wrongly decided. *Haskins* v. *Lewis* was a case in which the tenant had not only gone out of possession, but had sub-let, and was held to have forfeited protection; it was urged that a distinction should be drawn because there was no sub-letting in *Skinner* v. *Geary*. With the exception of Greer, L.J., whose view was that there was a sub-tenancy (unauthorised) though a rent free sub-tenancy, all concerned considered that *Haskins* v. *Lewis* was indistinguishable because it had laid down the broad principle that the Rent, etc., Restrictions Acts were meant to protect a tenant resident in a dwelling-house, or at all events "in actual occupation" of a dwelling-house.

But when we come to inquire what is meant by "occupation," we find, in *Skinner* v. *Geary*, judicial observations which make it a little difficult to reconcile *Brown* v. *Draper* with that authority, and which, incidentally, dispose of the objection raised by Lord Greene's hypothetical illustration of consequences.

As things stand, the difference in the two results may be explained by pointing out that the tenant in *Skinner* v. *Geary* left neither wife nor furniture in the house, so did not occupy even by a licensee. But, apart from the fact that this interpretation of *Skinner* v. *Geary* is hardly consistent with the reasoning so closely based on the principle laid down in *Haskins* v. *Lewis*, it is, I submit, right to ask whether the conception of "occupation" admits of more than occasional absence, and whether *animus revertendi* is not an essential consideration in determining whether protection is lost.

And early in the judgment of Scrutton, L.J., in *Skinner* v. *Geary* occurs the following: "The case is not one of a tenant who spends week-ends at a house, or of a sea captain who is absent for months it may be, but in fact returns between his voyages to his house, and has his wife and family living there while he is away." And later on (after the passage cited by Lord Greene, M.R., in the course of *Carter* v. *S.U. Carburetter Co., supra*): "This case is to be decided on the principle that the Acts do not apply to a person who is not personally occupying the house *and who has no intention of returning to it.* I except, of course, such a case as that to which I have already referred, namely, of temporary absence, the best instance of which is that of a sea captain, etc." Slesser, L.J., accepted the qualification: ". . . *if* he has an intention to return . . . it may be fairly said that he is still in actual possession and therefore entitled to be protected." Talbot, J., had already made the same point in the Divisional Court: "it would be impossible to say that, because a man goes away for reasons of business or pleasure, for a day or a week or even a few months, *intending to come back*, he ceases to reside at the premises."

But of the defendant in *Brown* v. *Draper* it might be said that, because of the presence of his wife and in spite of that of his furniture, he did not so intend, and he had not left the premises for such reasons as explain the departure of a sea captain, a serving soldier, or for reasons of either business or pleasure. Hence the decision is, I submit, at variance with the authority of *Skinner* v. *Geary*.

Our County Court Letter.

The Definition of Wrongful Arrest.

IN *Hawksley* v. *Oakes*, at Oxford County Court, the claim was for damages for wrongful arrest and false imprisonment. The plaintiff, on the 3rd December, 1942, was aged twenty-five and an undergraduate. His case was that on that day he had been walking along the road when he was stopped by the defendant, a police constable. The defendant placed his bicycle in front of the plaintiff, and accused him of behaving suspiciously. The plaintiff was then asked to go to the police station and to wait there while telephone inquiries were made. No charge was brought against him, and he left the station at 4.57 p.m. The defence was that no irregularity had occurred in the procedure adopted. His Honour Judge Donald Hurst held that the incident with the bicycle was not an arrest, and that the plaintiff was not under forcible detention at the police station. The plaintiff, by his conduct, appeared to have induced the defendant to take action. The subsequent events also appeared to have afforded some sort of satisfaction to the plaintiff. Judgment was given for the defendant, with costs. This decision has since been upheld by the Court of Appeal. Without calling upon counsel for the respondent, Lord Justice Scott observed that the two questions were entirely matters of fact for the county court judge. Asquith and Uthwatt, JJ., concurred in dismissing the appeal, with costs.

Decision under the Workmen's Compensation Acts.

Fall from Ladder not cause of Operation.

IN *Badham* v. *Kent and Sussex Contractors, Ltd.*, at Kidderminster County Court, the applicant's case was that he had been working as an electrical foreman at Blakeshall in August, 1942. His wages were then £10 5s. 2d. per week. During the course of his employment the applicant fell 10 feet from a ladder on to a concrete floor on the 10th August, 1942. He had to cease work on the 25th September, 1942, and underwent an operation on the 2nd October, 1942. The applicant was unable to resume work until the 15th February, 1943, and he claimed compensation for twenty weeks. The defendants' case was that the condition necessitating the operation was not attributable to the fall from the ladder. His Honour Judge Roope Reeve, K.C., upheld the respondents' contention. No award was therefore made.

To-day and Yesterday.

LEGAL CALENDAR.

February 14.—On the 14th February, 1815, John Taylor Coleridge, a young man destined to be a judge, but then just beginning to attend the courts, wrote some impressions to his brother: "I have not been very much impressed either with the talent or the eloquence of the Bar. In legal knowledge Abbott among the elder men and Richardson and Littledale among the younger, are certainly conspicuous. Gifford is very neat, but for the union of all qualifications give me Brougham . . . Instead of a bold, bristling, harsh man, he is excessively interesting, very respectful to the court, saying at times in a quiet manner very sarcastic things and yet by no means giving you an impression of a sarcastic temper; generally taking an old question in a new light and pressing it earnestly, yet with perfect command of himself. His diction is beautiful, always choice and correct, while his voice has just enough Scotch tone in it to make it very musical and agreeable . . . Lord Ellenborough is a very astonishing man; the grasp and vigour of his faculties are quite delightful; then, as to his diction, every sentence may be written down as it falls from his lips without any alteration."

February 15.—Sir Thomas Willes Chitty, K.C., formerly Senior Master of the Supreme Court and King's Remembrancer, died at the age of seventy-four on the 15th February, 1930. The legal line from which he sprang has many claims to fame, his father, Thomas Chitty, was Clerk of Assize on the Western Circuit and editor of two editions of "Smith's Leading Cases." His grandfather, Thomas Chitty, was among the greatest of special pleaders; men trained in his chambers went forward to the Woolsack, the Court of Appeal and the Bench; he left his mark on legal practice not only as the author of the King's Bench Forms, but also by his work on drafting the Common Law Procedure Act. Another generation back Joseph Chitty, who died in 1841, ensured his remembrance in Chitty's Statutes. Among the descendants of this ancestor stand Lord Justice Chitty, the Joseph Chitty who wrote the great book on "Contracts," and Edward Chitty, of "Deacon and Chitty's Bankruptcy Reports." As if these antecedents were not sufficient, Thomas Willes Chitty was a nephew on the maternal side of Mr. Justice Willes. He proved himself worthy of the legal inheritance thus piled up behind him, in his official work, as a reformer in the Central Office, as an author and editor, as one to whom his work was everything.

February 16.—Here is a paragraph from the *Morning Post* relating to an execution on the 16th February, 1788, the sequel to a fatal duel: "Why should *unfortunate* be applied to Mr. Keon who suffered death at Dublin on the 16th instant? He was convicted of as premeditated a *murder* as ever disgraced human nature or stamped *villain* on the character of man. Mr. Keon's sentence was the same as, in England, is pronounced on traitors, murder being high treason in Ireland. It was not, however, literally executed, he having been hung till quite dead, before any mutilation was performed, and that was done with as much delicacy as possible."

February 17.—In the Court of Exchequer on the 17th February, 1784, "the ship and cargo of a Frenchman were condemned by a special jury for smuggling liquor ashore in Mount's Bay, Cornwall. The defence was that the ship, bound for Havre-de-Grace, put in in distress and that the Frenchman, through ignorance, had stowed liquor for provisions without applying to the Custom House."

February 18.—On the 18th February, 1796, there came on in the Court of King's Bench "the cause of Jeffreys *versus* Mr. Walker and others, commissioners appointed for liquidating the Prince of Wales's debts, for the sum of £54,685 for jewels furnished by the plaintiff to His Royal Highness. Messrs. Sharp, Elias, Levi and Dugden, eminent diamond merchants, were called on the part of the plaintiff, who proved the value of the articles to be, unset, £50,997 10s.; while Messrs. Crisp, Duval and Francillon, on the part of the defendants, gave it as their opinion that, having examined the jewels, they were not worth more than £43,800, exclusive of a miniature picture of Her Highness. The jury after a quarter of an hour's consideration, found a verdict for the plaintiff £50,997 10s." This was an incident in the scandalous episode of the debts of the future George IV. In 1795, when his liabilities amounted to £639,890 and his yearly income to about £73,000, the whole matter came before Parliament, which adopted Pitt's proposal of increasing his income to £140,000, £25,000 of this being set aside yearly to liquidate his debts. A commission consisting of the Speaker, the Chancellor of the Exchequer, the Master of the Rolls, the Master of the King's Household, the Accountant of the Court of Chancery and the Surveyor of the Crown lands, was appointed to investigate and compromise the claims of the creditors. Jeffreys, the jeweller who brought the King's Bench action and found himself almost ruined, published a series of pamphlets attacking the Prince.

February 19.—On the 19th February, 1737, there were sentenced to death at the Old Bailey: William Maw, a soldier, for murdering a watchman; Mary Shrewsbury, for murdering her illegitimate child; Jeffery Moratt, a black man, for breaking into the Marquis of Lindsay's house; Charles Orchard, for highway robbery; and John Watson, for stealing plate from his master.

February 20.—Lord Davey died at his London house on the 20th February, 1907, after a short illness. His death was an irreparable loss to the House of Lords and the Judicial Committee of the Privy Council, for he was among the most accomplished lawyers of his day. He was appointed a Lord of Appeal in Ordinary in 1894, after less than a year in the Court of Appeal. He was not only a lawyer, but also a man of refined literary and artistic taste, not spoilt by a laborious professional life which constantly involved his starting work at five in the morning.

SHORTHAND ON THE BENCH.

"I have been defeated by a dot," said counsel recently in the Court of Criminal Appeal, after the testimony of a shorthand writer had vindicated the intuition of Cassels, J., who, thanks to his intimate knowledge of shorthand, had deduced the fact that a dot had been overlooked when the note of the judgment appealed from was transcribed. The reinstatement of the missing mark turned "six" into "these," thereby undermining the whole foundation of the appellant's argument. In a humbler way that dot can take its place beside the comma that hanged Roger Casement. Cassels, J., learnt his shorthand as a journalist and practised it in the hard school of the Press Gallery of the House of Commons. Now he makes systematic use of his talent, recording the evidence in every case he hears, black ink for examination-in-chief and re-examination, red for cross-examination. Singleton, J., too, can write a swift, accurate shorthand note, and I believe that Atkinson, J., has likewise mastered the art. The late Lord Merrivale, as an old journalist, remained to the end of his life a clear and accurate stenographer. Some years ago there was published a correspondence between him and the great Tim Healy, K.C., written in easily legible characters, for Healy's self-education had included learning shorthand and his proficiency brought him the notice and friendship of Sir Isaac Pitman. It also made him self-supporting at the age of sixteen, when he was appointed shorthand clerk in the office of the superintendent of the North Eastern Railway Company at Newcastle-on-Tyne. The first judge to use shorthand was Mr. Baron Gurney, who sat in the Court of Exchequer from 1832 to 1845. He came of the celebrated family of shorthand writers, who were engaged in all the most important official work, and he was attracted to the Bar when he used to accompany his father to the courts. On the County Court bench Judge Engelbach has a similar family connection with the art of shorthand writing.

Obituary.

HIS HON. BARNARD LAILEY, K.C.

His Honour Barnard Lailey, K.C., a county court judge from 1916 to 1939, died on Wednesday, 9th February, aged eighty-three. He was called to the Bar by the Middle Temple in 1890, and joined the South-Eastern Circuit. In 1914 he took silk, and two years later he was appointed county court judge of Circuit 7 (Cheshire). The following year he was transferred to Circuit 51 (Hampshire). In 1924 he was Commissioner of Assize, South Wales and Chester Circuit, was president of the council of county court judges in 1932, and served as chairman of the Hampshire Quarter Sessions and County Rating and Appeals Committees from 1932 to 1938.

SIR JOHN WATSON, K.C.

Sir John Charles Watson, M.B.E., K.C., solicitor-general for Scotland 1929–31, died on Tuesday, 8th February, aged sixty. He was educated at the John Neilson Institution and at Glasgow University, and was admitted a member of the Faculty of Advocates in 1909. He took silk in 1929, and received the honour of knighthood in 1931. From 1931 he has been Sheriff of Caithness, Orkney and Shetland.

MR. C. J. ARMITAGE.

Mr. Clarendon James Armitage, solicitor, of Messrs. Armitage and Co., solicitors, of Fore Street, and Upper Edmonton, N.18, died on Thursday, 3rd February, aged sixty-five. He was admitted in 1898.

MR. H. V. O. COOK.

Mr. Howel Victor Oscar Cook, solicitor, of Messrs. Howel V. O. Cook & Co., solicitors, of Wrexham, died on Tuesday, 8th February, aged fifty-six. He was admitted in 1910.

MR. A. FRINDALL.

Mr. A. Frindall, who had been associated with the firm of Messrs. Bell, Brodrick & Gray, solicitors, of 22, Martin Lane, E.C.4, for fifty-eight years, died recently aged seventy-five.

MR. A. H. STOKES.

Mr. Alexander Hudleston Stokes, solicitor, of Messrs. Sprott, Stokes & Turnbull, solicitors, of Shrewsbury, died recently aged sixty-seven. He was admitted in 1900.

Britain's oldest solicitor still on the practising roll, Mr. Henry Isaacs Coburn, of West Hampstead, has received a letter of congratulation from the President of The Law Society on the attainment of his ninety-fifth birthday. He was admitted in 1870.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Services Divorces.

Sir,—I have read with interest Mr. Cox's reply in your issue of 5th February, at p. 49. In my view the relationship of husband and wife is not one which should be governed by such matters as military efficiency. It is horrible to think that it should be.

As regards the second limb of Mr. Cox's case, viz., that his suggested legislation would maintain the stability of the family, I do not think there is any need to add anything to Dr. Cohn's admirable letter, except to make this observation. If such legislation was a failure on the Continent, what chance of success would it be likely to have here, where individual liberty is still highly valued by many people?

RICHARD C. FITZGERALD.

Lincoln's Inn, W.C.2.
9th February.

Reviews.

Rent and Mortgage Interest Restrictions. By the Editors of "Law Notes." Nineteenth Edition. 1943. Demy 8vo. pp. xxviii and (with Index) 371. London: "Law Notes" Publishing Offices. 17s. 6d. net.

The previous edition of this standard work was published in December, 1939. Four years of war have revealed the need for the consolidation of the Acts, but, as the learned authors remark in their Preface, this appears to be a task which the authorities dare not undertake. The difficulties of authors and publishers in the present emergency are illustrated by the case of *Dunthorne and Shore* v. *Wiggins*, in which the late Bennett, J., decided that a defaulting purchaser of a house, having been let into possession, was entitled to the protection of the Rent Acts. This decision was reversed by the Court of Appeal after the present edition was printed off. The attention of readers is therefore called to the decision by a printed slip for insertion at the appropriate page. The same printed slip directs attention to *Francis Jackson Developments, Ltd.* v. *Stemp* (1943), 2 All E.R. 601—a case on the other side of the line, i.e., in which a defaulting purchaser was held to be protected. The vexed question of what constitutes "furniture" as opposed to "fittings" is discussed at pp. 94 and 95. The decision of the majority of the Court of Appeal in *Gray* v. *Fidler* (1943), 87 SOL. J. 362, cannot be regarded as the last word on the subject. The problem of excessive charges for furnished rooms is at present exercising the minds of local authorities and magistrates on the scope of s. 10 of the 1920 Act. By the time the next edition is published, the position will doubtless have been clarified by decisions of the Divisional Court. In the meantime, no superlatives on the part of reviewers are required to commend this volume to the profession. As a reliable and workmanlike guide, it is as indispensable now as any of its predecessors have been, since the last world war created a housing shortage.

Paterson's Licensing Acts. Fifty-second edition, by JAMES WHITESIDE, Solicitor and Clerk to the Justices for Exeter. 1944. Crown 8vo. pp. cxvi, 1526 and (Index) 182. London: Butterworth & Co. (Publishers), Ltd. Thick edition, 32s. 6d. net; thin edition, 36s. net.

The latest edition of this standard work appears at an opportune time, as licensing problems have been accentuated by, e.g., the apparent increase in drinking among young persons. The question of licences in suspense, owing to war circumstances, is now regulated by the Finance Act, 1942. An effort to combat "black market" transactions in intoxicating liquor has been made by the exercise of powers under Defence Regulation 55B. This regulation is set out and annotated, together with the following regulations: 42CA (unlawful gaming parties); 42CB (control of entertainments); 60AA (canteens for civilian workers); 60AB and 60AC (temporary amendments of the Shops Acts). Due notice is taken of the decision in *R.* v. *Weymouth Licensing JJ.* [1942] 1 K.B. 465, with regard to the discretion to refuse the grant of a special removal of an "old" on-licence, and also of *Henriksen* v. *Grafton Hotels, Ltd.* [1942] 1 K.B. 82. The latter case decided that payments of instalments of monopoly value are capital payments, and not deductible from income tax assessments. The control of clubs is an ever-present problem, and fresh registrations are now restricted under Defence Regulation 55C. The Finance Act, 1943, with its increase in customs and excise duties, is incorporated so far as it falls within the scope of the work. The present edition preserves all the familiar features by which "Paterson" has long been recognised. Its value is enhanced by what is described in the Preface as a "process of careful spring cleaning," i.e., the amendment and revision of many passages throughout the work.

Mr. James Neville Gray, K.C., has been elected a Bencher of Lincoln's Inn in place of the late Sir William Searle Holdsworth, O.M., K.C.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Auctioneer's Remuneration.

Q. A client of mine requested me to instruct an auctioneer to sell some leasehold property and furniture. I instructed an auctioneer and he attended on the premises, made an inventory of the furniture and took particulars of the property. He then instructed the printers to put the posters in hand. The posters were printed, but before being delivered by the printers, my client informed me that he had sold the property and the furniture privately for £1,100. On my informing the auctioneer of this, he submitted a bill in which he allocated the value of the property at £868 and the furniture at £232, and in consequence submitted a bill as follows:—

	£	s.	d.
Commission on £300 at 5 per cent.	15	0	0
Commission on balance of £568 at 2½ per cent. ..	14	4	0
Commission on furniture, £232 at 7½ per cent. ..	17	8	0
He also included a figure of £8 14s., namely, commission on the valuation of the furniture, £5 5s. per cent. on first £100 and 2½ guineas on balance	8	14	0

My client is of the opinion that the charges are excessive and that the auctioneer is only entitled to be paid for the work actually done by him, namely, the attendance, allotting the furniture and taking particulars of the property. What is your opinion?

A. The auctioneer was instructed to *sell* the property and furniture, not merely to do the preliminary work. In the events that have happened, he cannot claim commission on the amounts realised. Nevertheless the auctioneer can claim damages for breach of contract, viz., deprivation of the opportunity of earning the commission. The measure of damage will be the amount of the unearned commission. The amount claimed is recoverable from the querist's client.

Rules and Orders.

S.R. & O., 1944, No. 113/L. 2.

COUNTY COURT, ENGLAND. COURTS AND DISTRICTS.

THE COUNTY COURT DISTRICTS (MISCELLANEOUS) ORDER 1944. DATED JANUARY 31, 1944.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the County Courts Act, 1934,* and all other powers enabling me in this behalf, do hereby order as follows:—

1.—(1) The Blackburn and Clitheroe County Court shall cease to be held at Clitheroe and shall be held at Blackburn by the name of the Blackburn County Court.

Provided that no process shall be invalid if the Court is described therein as the Blackburn and Clitheroe County Court.

(2) The Registrar of the Blackburn County Court shall cease to hold Registrar's Courts at Clitheroe and Darwen.

2.—(1) The Eye and Diss County Court shall cease to be held at Eye and shall be held at least once in every two months at Diss by the name of the Diss County Court.

Provided that no process shall be invalid if the Court is described therein as the Eye and Diss County Court.

(2) The Registrar of the Diss County Court shall cease to hold a Registrar's Court at Eye and shall hold a Registrar's Court at Diss on such days as the Judge may appoint.

3.—(1) The Carmarthen, Llandilo and Ammanford County Court shall cease to be held at Llandilo and shall be held at Carmarthen and Ammanford by the name of the Carmarthen and Ammanford County Court.

Provided that no process shall be invalid if the Court is described therein as the Carmarthen, Llandilo and Ammanford County Court.

(2) The County Court Office at Llandilo shall be closed.

4. Part of the Borough of Merthyr Tydfil viz.: Fair View, Incline Top, Nos. 1–42 Jenkin Street, King Street, Nos. 80–82 Locke Street, and Parry's Houses, all in Abercynon, shall cease to form part of the district of the Merthyr Tydfil County Court and shall be transferred to and form part of the district of the Aberdare County Court.

5. The parishes of Skinningrove and Moorsholm shall cease to form part of the district of the Whitby County Court and shall be transferred to and form part of the district of Stokesley and Guisborough County Court.

6. The part of the Borough of Hammersmith which lies to the North of a line drawn down the centre of the Uxbridge Road shall cease to form part of the district of the Bloomsbury County Court and shall be transferred to and form part of the district of the Willesden County Court.

7. In this Order "Parish" shall have the same meaning as "Parish" in the Local Government Act, 1933.†

8. This Order may be cited as the County Court Districts (Miscellaneous) Order 1944 and shall come into operation on the First day of March, 1944.

Dated this 31st day of January, 1944.

Simon, C.

* 24 & 25 Geo. 5, c. 53. † 23 & 24 Geo. 5, c. 51.

Notes of Cases.

HOUSE OF LORDS.

Willis *v.* New Hucknall Colliery Co., Ltd.

Viscount Maugham, Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Wright. 21st December, 1943.

Master and servant—Workmen's compensation—Partial incapacity—Rates of pay for pre-accident employment increased—Application for review—Date from which increase payable—"Review"—Meaning—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 5, c. 84), *s.* 11 (3).

Appeal from a decision of the Court of Appeal (Goddard and du Parcq, L.JJ., Scott, L.J., dissenting).

The Workmen's Compensation Act, 1925, s. 11 (3), provides: "Where the review takes place more than six months after the accident, and it is claimed and proved that, had the workman remained uninjured and continued in the same class of employment as that in which he was employed at the date of his accident, his average weekly earnings during the twelve months immediately preceding the review would, as a result of fluctuations in rates of remuneration, have been greater or less by more than 20 per cent. than his average weekly earnings during the twelve months previous to the accident (or if the weekly payment has been previously varied on a review during the twelve months previous to that review or the last of such reviews), the weekly payment shall be varied so as to make it such as it would have been if the rates of remuneration obtaining during the twelve months previous to the review had obtained during the twelve months previous to the accident." The appellant, a workman, was employed at the respondent company's colliery as a contractor in a hand-got stall when he was injured on the 25th May, 1928. His average pre-accident earnings were £4 9s. 2d. In March, 1929, he restarted to do light work for the respondents and was paid compensation for partial incapacity. There had been certain percentage increases in the remuneration of hand-got stall contractors since 1928. During the twelve months prior to the 1st August, 1937, the average weekly wage was £5 8s. 6d., which exceeded £4 9s. 2d. by more than 20 per cent. During the twelve months prior to the 1st September, 1940, the average weekly wage was £6 12s. 3d., which sum exceeded £5 8s. 6d. by more than 20 per cent. During the twelve months prior to the 1st February, 1942, the average weekly wage was £7 19s. 10d., which sum exceeded £6 12s. 3d. by more than 20 per cent. On the 22nd September, 1941, the workman, by letter to the respondents, informally claimed a review, and on 30th January, 1942, he issued a formal application for review in the Mansfield County Court. By his application, the workman claimed to have three reviews: (*a*) as from 1st August, 1937, by substituting for his pre-accident average weekly wage of £4 9s. 2d. the figure of £5 8s. 6d.; (*b*) as from the 1st September, 1940, by substituting the figure of £6 12s. 3d.; (*c*) as from the 1st February, 1942, by substituting the figure of £7 19s. 10d. The learned county court judge made an award of £89 15*s.* 4d. in favour of the workman, his claims under (*a*), (*b*) and (*c*) being successful. The Court of Appeal reversed his decision and held the date of the review should be the 30th January, 1942.

Viscount Maugham said that whatever was the meaning of the word "review" and of the date indicated by the phrase "during the twelve months immediately preceding the review" the effect of s. 11 (3) was that, if certain facts in reference to fluctuations in rates of remuneration were alleged and proved, then (applying s. 11 (3) to s. 9) the weekly payment would be half the difference between (*a*) the hypothetical average earnings of the workman before the accident calculated by reference to the rates of remuneration obtaining during the twelve months before the review, and (*b*) the average of his actual or possible earnings. The theory of s. 11 (3) underlying claim (*a*) was that on the 1st August, 1937, it was capable of proof that during the twelve months previous to that date the hypothetical average pre-review earnings would have been greater by just more than 20 per cent. than the workman's pre-accident earnings. That date, namely the 1st August, 1937, was said to be the date of "the review" indicated by subs. (3). Therefore, it could be proved at any time thereafter that the workman was entitled as from the 1st August, 1937, to the variation pointed out in the subsection, with the result that he was still entitled to have substituted for his average pre-accident earnings of £4 9s. 2d. the figure of £5 8s. 6d., and to have an increase of his weekly payments until the next review. On that theory the word "review" indicated a date having no connection with the date of the claim or of the hearing of the arbitration or the award. It was the date on which a certain arithmetical result could have been reached. He could not believe that that contention accorded with the natural meaning of the noun "review" which occurred no less than eight times in the subsection. The word in the context in which it was found *prima facie* indicated a proceeding or process in which something could be proved. He should add that subs. (3), being applicable on the claim of the employer and of the workman alike, it seemed to him to be *prima facie* improbable that the Legislature should have been contemplating the recovery by the employer of substantial sums at periods long after the weekly payments had been paid and spent by the workman. The question remained, what was the date of such review for the purposes of subs. (3). Several dates might be suggested. The Court of Appeal accepted the correct date as being that of the formal applications in the county court proceedings. Their lordships felt that, since the section was applicable to cases where the review was the result of an agreement out of court, the review should be taken as beginning when there was an unequivocal, though informal, claim to a variation, even though it were followed by an arbitration beginning with a formal application pursuant to the rules under the Act. The date of the review was accordingly the 22nd September, 1941. Subject to that variation, the judgment of the Court of Appeal should be affirmed.

Lord Thankerton and Lord Macmillan agreed in dismissing the appeal. Lord Russell of Killowen and Lord Wright dissented.

Counsel: *Beney*, K.C., and *Gilbert Dare*; *Gilbert Paull*, K.C., and *J. B. Herbert*.

Solicitors: *Taylor, Jelf & Co.*; *Peacock & Goddard*, for *Elliot Smith and Co.*, Mansfield.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

APPEAL FROM COUNTY COURT.

Ingall *v.* Moran.

Scott, Luxmoore and Goddard, L.JJ. 10th December, 1943.

Practice—Action to recover damages for negligence improperly constituted—Plaintiff's writ issued as administrator—Letters of administration granted later—Expiry of twelve months' limitation.

Defendant's appeal from a judgment of His Honour Judge Gerald Hurst at Croydon County Court awarding the plaintiff, as administrator of his son's estate, damages for loss of expectation of life under the Law Reform (Miscellaneous Provisions) Act, 1934.

The plaintiff alleged negligence by the defendant and the defendant denied negligence and pleaded (*a*) contributory negligence by the deceased, and (*b*) s. 1 (*a*) of the Public Authorities Protection Act, 1893, as amended by s. 21 (1) of the Limitation Act, 1939. The writ in the action was issued before the end of the statutory twelve months' limitation period, but letters of administration were not issued to the plaintiff until after the expiry of the period. It was also contended that the action was never properly constituted, as letters of administration had not been granted at the date of the writ. It was argued for the plaintiff that his title related back to the death of his son.

Scott, L.J., said that if the deceased had left a will, his cause of action would at the moment of his death automatically have vested in his executor. As he died intestate, it vested in the President of the Probate, Divorce and Admiralty Division and remained with him until it automatically passed to the administrator on letters of administration being issued. There was no grant at the date of the issue of the writ, and if, on the defendant's demand, the plaintiff had failed to produce the letters of administration, the action would, on the defendant's application, have been struck out. Such an action was incapable of being converted by amendment into a valid claim. The old writ was incurably a nullity; it was born dead, and could not be revived. It followed that the statement of claim was not delivered in any action recognised by the Rules of the Supreme Court, and all subsequent proceedings, including the judgment, were nugatory. On the alternative plea, assuming that the act of negligence which caused the death was one within the category defined in s. 1 of the Public Authorities Protection Act, 1893, and s. 21 (1) of the Limitation Act, 1939, if the writ was bad when issued, the action was never commenced. Once the period of limitation had passed without a writ being issued by a duly qualified administrator the cause of action was barred, and could not be resurrected (*Mabro* v. *Eagle Star and British Dominions Insurance Co., Ltd.* [1932] 1 K.B. 485, at p. 487). The appeal was allowed with costs.

Luxmoore, L.J., delivered a concurring judgment.

Goddard, L.J., said that there was no doubt that where a deceased person left a will and therein named an executor the latter could institute actions before obtaining probate, though the action might be stayed until probate was granted (*Tarn* v. *Commercial Banking Co. of Sydney* (1884), 12 Q.B.D. 294). An administrator was in a different position (*Meyappa Chetty* v. *Supramanian Chetty* [1916] 1 A.C. 603, at p. 608). The statements at p. 181 of the Annual Practice for 1943, and at p. 14 of the Yearly Practice, 1940, that an administrator may sue in the Chancery Division before grant were too wide, and the cases cited in Daniell's Chancery Practice, p. 352, as authority for the proposition (*Fell* v. *Lutwidge* (1740), 2 Atk. 120; *Humphreys* v. *Humphreys* (1734), 3 P.W. 351, and *Horner* v. *Horner* (1854), 23 L.J. Ch. 10), were cases in which letters of administration were not necessary for a plaintiff to establish his title to sue or in which the absence of letters did not afford a defence to the defendant. Nor was it necessary to consider the many cases which showed that once letters were granted the title of the administrator related back to the death. All they showed was that, once letters had been obtained, the title related back so that the administrator might sue in respect of a cause of action which had occurred to the intestate before his death, provided the cause of action survived. The result was that the action was and always remained incompetent, and the appeal should be allowed with costs.

Counsel: *Cecil Havers*, K.C., and *Bertram Reece*; *H. D. Samuels*, K.C., and *J. Bassett*.

Solicitors: *L. Bingham & Co.*; *William Charles Crocker*.

[Reported by Maurice Share, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

Duke of Westminster *v.* Store Properties, Ltd.

Bennett, J. 14th December, 1943.

Emergency legislation—War damage contribution—"Rent"—Meaning—War Damage Act, 1943 (6 & 7 *Geo.* 6, *c.* 21), *s.* 50.

Adjourned summons.

By a lease dated the 30th May, 1908, the plaintiff demised a dwelling-house for a term of ninety years at an annual rent of £150. The lease contained a provision under which the premises were to be used as a private dwelling-house only. The lease was assigned to the defendant company in November, 1936. By a deed of licence dated the 12th December, 1936, the plaintiff granted to the defendants a licence to use the premises for offices. While the premises were so used, the defendants covenanted to

pay the additional yearly sum of £50 which was described as a "rent." The question raised by this summons was whether the additional sum of £50 was "rent" within s. 50 of the War Damage Act, 1943. The plaintiff contended it was not rent.

BENNETT, J., said that the point was a short one and depended upon whether the word "rent" was used in s. 50 in its technical sense or was to be given some other and, if so, what meaning. He was not referred to any provisions of the Act which indicated that the word was used in any special sense. It was clear that the annual sum payable under the licence was not "rent" in the technical meaning of the term. The licence did not purport to create a new demise in consideration of an additional rent of £50. This sum was not the consideration for the demise of the land comprised in the original lease but was the consideration payable under a collateral agreement to enable the tenant to do upon the land then vested in him an act which he could not otherwise lawfully do. The language of s. 50 confirmed the view that the word "rent" in that section was used in its technical sense. A sum payable to a landlord by a tenant by virtue of a collateral agreement containing no demise could not properly be referred to as rent.

COUNSEL: *E. G. Eardley-Wilmot; A. C. Nesbitt.*

SOLICITORS: *Boodle, Hatfield & Co.; Markby, Stewart & Wadesons.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Inland Revenue Commissioners *v.* Oswald.

Macnaghten, J. 25th October, 1943.

Revenue—Income tax—Capitalisation of net interest—Mortgage by reversioner of reversionary interest—Mortgage deed providing for capitalisation of interest after lapse of certain period after interest became due—Capitalisation by trustees of mortgagee's will of arrears of net interest—Trust fund from which mortgagor's reversionary interest derived not sufficient to pay whole of net interest—Claim by Revenue on surviving trustee to tax on amount of interest actually paid though less than net interest—Decision rejecting claim of Revenue on ground that net interest which had been capitalised not taxable—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. E, All Schedules Rules, r.* 21.

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

In this case the Crown appeals from the decision of the Special Commissioners discharging an assessment to income tax for the year 1939-40 in the sum of £4,399 3s. 1d. on O, the sole surviving trustee of a certain settlement made on 8th June, 1885. Under the settlement Mrs. B had a reversionary interest in the settled fund. In 1889, 1901 and 1905 Mrs. B mortgaged her reversionary interest to secure the repayment with interest of respective sums which she had borrowed from L, the aggregate of such sums being £3,100. In the last of the mortgage deeds was a provision that if the interest was not paid within twenty-one days after it became due, the mortgagee L had power to capitalise it and add it to the principal. No interest was paid after 1906. L died in 1920. In 1933 the trustees of L's will exercised the option given to L in the deed of 1905 to capitalise the interest then owing, and on 13th September, 1938, they further capitalised the interest that had fallen due since August, 1935. The total interest thus capitalised amounted on 13th September, 1938, to £5,201 8s. 2d., which, together with the principal sum of £3,100, amounted to £8,301 8s. 2d. Mrs. B died in 1933, and her reversionary interest fell into possession on 29th June, 1938, and after the capitalisation above referred to, the trustees of L's will made a claim on the trustees of the settlement for the above-mentioned sum of £8,301 8s. 2d.. The settled fund in the hands of the trustees of the settlement was sufficient to pay the principal of £3,100, but there was only available £4,399 3s. 1d. to pay the interest, and the settlement trustees between January and February, 1940, paid these two sums to the trustees of L's will. The £5,201 8s. 2d. capitalised interest was net interest, that is the interest remaining due after the deduction of the income tax, the gross interest before such deduction having been £6,462 3s. 11d. As the deduction of tax had only been a paper transaction, and the Revenue had not received any tax, they contended that the settlement trustees were persons by or through whom the amount of £4,399 3s. 1d. in respect of interest had been paid within the meaning of r. 21 of All Schedules Rules, and therefore, O, as the surviving trustee, was liable to pay the tax on the £4,399 3s. 1d. It was contended on behalf of O that once net interest had been capitalised, it ceased to be interest, and, therefore, was not subject to tax, and the case of *Inland Revenue Commissioners* v. *Lawrence Graham & Company* [1937] 2 K.B. 179; 21 T. Cas. 158, was cited as an authority for that proposition.

MACNAGHTEN, J., said that the claim of the L trustees upon the settlement trustees for the sum of £8,301 8s. 2d. was for the principal sum, and net interest only, and as that net interest had been capitalised, there was no distinction between the case and the *Lawrence Graham* case. The appeal of the Crown would therefore be dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills; J. Millard Tucker*, K.C., and *J. S. Scrimgeour.*

SOLICITORS: *Solicitor of Inland Revenue; Ranger, Burton & Frost.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Selection Trust, Ltd. *v.* Devitt (Inspector of Taxes) and Inland Revenue Commissioners.

Macnaghten, J. 1st November, 1943.

Revenue—Income tax—Dividends received by British company from American company—Profits of American company partly derived from dividends from five other British companies who had already borne tax—Claim of company that only such part of American dividends should be taxed as represented American company's profits other than those derived from dividends from the five British companies—National defence contribution—Claim of company that only that part of the American dividends liable to defence contribution which represented profits of American company other than those derived from the five British companies who were themselves liable to defence contribution—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D, Case* I—*Finance Act*, 1937 (1 *Edw.* 8 *and Geo.* 6. *c.* 54), *Fourth Sched., para.* 7 (*a*) (*i*).

Cases stated by the Commissioners for the Special Purposes of the Income Tax Acts.

In the first case the S company, who were a company carrying on business in this country of dealing and holding investments, appealed against the decision of the Special Commissioners that they were liable to tax under Sched. D, Case I, upon the whole of the dividends which they received from an American company. Part of the profits made by the American company consisted of dividends which they received from five British companies carrying on business in this country. It was contended on behalf of the company that, as a result of the decision in *Gilbertson* v. *Fergusson* (1881), 7 Q.B.D. 562; T. Cas. 501; the company was only liable to tax on that part of the dividends from the American company which represented profits other than those which they made in respect of the dividends which they had received from the five British companies, for those dividends from the five British companies had already borne tax under r. 20 of the Rules applicable to all schedules. In the second case, the S company appealed against the decision of the Special Commissioners that, in computing the profits of the company for the purposes of national defence contribution, the dividends received from the American company should be included. It was contended on behalf of the company that, as a result of the provisions of para. 7 (*a*) (i) of Sched. IV to the Finance Act, 1937, only such part of those dividends should be included amongst the company's profits as represented profits made by the American company other than those represented by the dividends received by them from the five British companies, which were within the meaning of para. 7 (*a*) (i), bodies corporate carrying on trades or businesses to which the provisions of the Act charging national defence contribution applied. The paragraph provides as follows: "Income received from investments or other property shall be included in the profits in the cases and to the extent provided in this paragraph, and not otherwise: (*a*) in the case of the business . . . consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property except: (i) income received directly or indirectly by way of dividends or distribution of profits from a body corporate carrying on a trade or business to which the section of this Act charging the national defence contribution applies."

MACNAGHTEN, J., said that, as regards the first case, the case of *Gilbertson* v. *Fergusson, supra*, was adversely criticised by Lords Atkin and Wright, and by implication by Lord Russell in the case of *Barnes* v. *Hely-Hutchinson* [1940] A.C. 81; therefore there was no ground for extending the principle of *Gilbertson's* case. That case decided that that portion of the dividends received from a Turkish banking company which represented profits made in the United Kingdom by a branch of the Turkish bank carrying on business in London were to be exempt from taxation. Consequently, the principle of that case would apply to any case where a foreign company carried on business in the United Kingdom and thereby made profits liable to United Kingdom tax, but in the S company's case the foreign company did not carry on business in the United Kingdom, but merely received dividends from British companies, therefore, it would be an extension of the principle of *Gilbertson's* case to exempt from tax that part of the dividends received from the American company which represented the dividends from the five British companies, and as that principle should not be extended, the whole of the American dividends were subject to tax, and the appeal in the first case would be dismissed. As regards the second case, the S company, when they received the American dividends, indirectly received a portion of the dividends which the American company had received from the five British companies which were liable to be assessed to national defence contribution, and it seemed that the words in para. 7 (*a*) (i) of the 1937 Act must have been inserted for no other purpose than to meet such a case as this, the appeal, therefore, on the second case would be allowed, and the assessments should go back to the Commissioners to be adjusted in accordance with that decision.

COUNSEL: *J. Millard Tucker*, K.C., *F. Grant*, K.C., and *J. W. P. Clements; The Attorney-General* (Sir Donald Somervell, K.C.), *J. H. Stamp*, and *R. P. Hills.*

SOLICITORS: *Freshfields, Leese & Munns; Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Inland Revenue Commissioners *v.* Trinidad Petroleum Development Co., Ltd.

Macnaghten, J. 3rd November, 1943.

Revenue—Excess profits tax—Claim of company to deduct debt of £800,000 *from capital employed in standard period—Debt owed to subsidiary company during standard period, but not during chargeable accounting period—Statutory provisions that capital to be computed as if debt does not exist where one company owes debt to its subsidiary company—Whether statutory provisions only apply where debt is owed during both standard and chargable accounting periods—Finance (No.* 2) *Act*, 1939 (2 & 3 *Geo.* 6, *c.* 109), *ss.* 13, 17, *Sched. VII, Pt. II, r.* 2 (i).

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The Crown appealed from the decision of the Special Commissioners that the sum of £800,000, being a debt within the meaning of the Finance (No. 2)

Act, 1939, Sched. VII, Pt. II, r. 2 (1), was deductible by the T company from the capital which they used in the standard period as defined by s. 13 for the purposes of excess profits tax. The standard period was the years 1935 and 1937, and the chargeable accounting periods as defined by s. 22 (*c*) were 1st April, 1939, to 31st July, 1939, and 1st August, 1939, to 31st July, 1940, respectively. For a period which began before the commencement of the standard period and which ended on a date in January, 1937, the T company owed the sum of £800,000 to the B company, but on that latter date the debt was discharged. The T company was also a subsidiary company of the B company during the period, but ceased to be so at the end of the period. It was important from the T company's point of view that the debt of £800,000 should be deductible from the capital employed by them during their standard period because of the provisions of the proviso to s. 13 (3), which are as follows: "Provided that if the average amount of the capital employed in the trade or business in any chargeable accounting period is greater or less than the average amount of the capital employed therein to the standard period, the standard profits for a full year shall, in relation to that chargeable accounting period be increased, or, as the case may be, decreased by the statutory percentage of the increase or decrease in the average amount of the capital employed in the trade or business." The statutory percentage as defined by subs. (9) was in the case of the T company 8 per cent.; consequently as the average capital employed by the company in the chargeable accounting period was greater than the average amount of capital employed by them during the standard period apart from the £800,000 debt, it followed that if that debt could be deducted from the capital employed during the standard period, the average amount of capital employed by the company during the standard period would be very materially decreased, and therefore the average capital employed by the company in the chargeable accounting period would be correspondingly greater still than the average capital employed by them during the standard period, and they would be entitled to claim that their standard profits should be increased by 8 per cent. of that further increase. The Crown, however, contended that as the T company was a subsidiary company of the B company, the £800,000 was not deductible from the capital employed by them during the standard period, by reason of the operation of s. 17 (1) of the Act, which provides as follows: "(1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one body corporate to another body corporate, and one of those bodies corporate is a subsidiary of the other . . . the capital, profits and losses of both bodies corporate shall be computed for the purposes of this part of this Act as if— . . . (*b*) any debt in respect of which any such interest is payable did not exist." The T company had been paying interest to the B company, but they contended that s. 17 (1) only applied where the two companies were interconnected during a chargeable accounting period, and in this case they ceased to be interconnected before the beginning of any chargeable accounting period.

MACNAGHTEN, J., said that in view of the fact that the provisions of subss. (3) and (4) of s. 17 of the Act only made a subsidiary company liable for excess profits tax, where it was a subsidiary company for the whole or part of the chargeable accounting period as therein provided, it followed that the capital of a company which was not a subsidiary during any part of the chargeable accounting period could be ascertained independently of the other company, and the fact that it was a subsidiary company during the standard period was quite immaterial. The provisions, therefore, of s. 17 ought only to be read as applying to companies interconnected after the commencement of the chargeable accounting period, and did not apply to companies which had ceased to be interconnected before that time, and were, therefore, separately assessable to excess profits tax. The debt, therefore, of £800,000 was deductible from the capital of the T company employed during their standard period, and the appeal would be dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*; *J. Millard Tucker*, K.C., *Frederick Grant*, K.C., and *J. W. P. Clements*.

SOLICITORS: *Solicitor of Inland Revenue*; *Elvy Robb & Co.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 129. **Defence** (Finance) (Definition of Sterling Area) Order, Feb. 8.

E.P. 130. **Finance.** Regulation of Payments (Consolidation) Order, Feb. 8.

E.P. 115. **Food.** Points Rationing Order, Feb. 2, amending the Food (Points Rationing) (No. 3) Order, 1943.

No. 94. **National Service.** Order in Council, Jan. 20, approving Proclamation directing that certain British subjects shall become liable to be called up for service.

No. 117. **Supreme Court, Northern Ireland.** Procedure. Order, Jan. 28, amending Rules of the Supreme Court (Northern Ireland) 1936.

STATIONERY OFFICE.

List of Statutory Rules and Orders, January, 1944.

The usual monthly meeting of the directors of the Law Association was held on the 7th February, Mr. C. D. Medley in the chair. There were seven other directors present. Applications for assistance were considered and £219 was voted in relief of deserving cases. The secretary reported the result of the annual appeal to be nine life members and thirty-two annual subscribers, and other general business was transacted.

Parliamentary News.

HOUSE OF LORDS.

Disabled Persons (Employment) Bill [H.C.].
Supreme Court of Judicature (Amendment) Bill [H.C.].
Read Second Time. [15th February.

HOUSE OF COMMONS.

Education Bill [H.C.].
In Committee. [9th February.
House of Commons Disqualification (Temporary Provisions) Bill [H.C.].
Read Second Time. [11th February.
Income Tax (Offices and Employments) Bill [H.C.].
Read Second Time. [10th February.
Prize Salvage Bill [H.L.].
Read Second Time. [11th February.

Notes and News.

Honours and Appointments.

Mr. H. B. H. HYLTON-FOSTER has been appointed Recorder of Huddersfield, in succession to Mr. G. H. B. Streatfeild, K.C., who has been appointed Recorder of Hull. Mr. Hylton-Foster is a major serving with the Central Mediterranean Forces, where he is Deputy Judge-Advocate.

Mr. WILLIAM PROUDLOCK ERRINGTON, formerly assistant solicitor to the Tynemouth Corporation, has been appointed Town Clerk of Scunthorpe, Lincs. Mr. Errington was admitted in 1932.

Notes.

A temporary library for members of the Inner Temple, to replace the one destroyed by enemy action, has been opened at 2, King's Bench Walk.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel. LANGham 2127), on Thursday, 24th February, 1944, at 5 p.m., when specimens will be produced and slides shown by Sir Bernard Spilsbury, F.R.C.P., Professor W. G. Barnard, F.R.C.P., Eric Gardner, M.B., and C. Keith Simpson, M.D., B.S.

A note in *The Times* states that Uthwatt, J., in the Chancery Division recently, said that, when solicitors were called on to make discovery of documents in an action, it was their duty to disclose all the documents relating to the action. It did not matter whether those documents did or did not help their clients, or whether they were or were not admissible in evidence in the action. The sole question was whether they related to matters in issue in the action. It was a matter on which the administration of justice very greatly depended, and there was no question on which solicitors, in carrying out their duty to assist the court, ought to search their consciences more.

Wills and Bequests.

Mr. Frederick Charles Boyes, J.P., solicitor, of Hartford, Hunts, and of King's Bench Walk, E.C., left £24,742, with net personalty £13,977.

Mr. Harold Charles Eaves, solicitor, of Birmingham, left £84,250, with net personalty £7,586.

Mr. Lewis Thomas Helder, solicitor, of Whitehaven, left £25,666, with net personalty £24,495.

Mr. Edward Lloyd, solicitor, of Birkenhead and of Liverpool, left £61,177, with net personalty £47,667.

His Honour Sir Edward Abbott Parry, of Sevenoaks, left £14,766, with net personalty £14,676.

Mr. Cecil William Peacock, solicitor, of Northampton, left £30,730, with net personalty £20,859.

Mr. Harry Eastwood Riley, retired solicitor, of Halifax, left £78,914, with net personalty £76,759.

Mr. William Wilkins, solicitor, of Preston and Blackpool, left £41,352, with net personalty £35,219.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1944

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice SIMONDS.
Monday, Feb. 21	Mr. Blaker	Mr. Hay	Mr. Farr
Tuesday, ,, 22	Andrews	Farr	Blaker
Wednesday, ,, 23	Jones	Blaker	Andrews
Thursday, ,, 24	Reader	Andrews	Jones
Friday, ,, 25	Hay	Jones	Reader
Saturday, ,, 26	Farr	Reader	Hay

	GROUP A.		GROUP B.	
DATE.	Mr. Justice COHEN *Witness*	Mr. Justice VAISEY *Non-Witness*	Mr. Justice MORTON *Non-Witness*	Mr. Justice UTHWATT *Witness*
Monday, Feb. 21	Mr. Jones	Mr. Reader	Mr. Andrews	Mr. Blaker
Tuesday, ,, 22	Reader	Hay	Jones	Andrews
Wednesday, ,, 23	Hay	Farr	Reader	Jones
Thursday, ,, 24	Farr	Blaker	Hay	Reader
Friday, ,, 25	Blaker	Andrews	Farr	Hay
Saturday, ,, 26	Andrews	Jones	Blaker	Farr